

Professionalism Commission Minutes, November 16, 2005

Judge Battaglia called the meeting to order at 3:00 p.m. Absentees included: Judge Bennett, A. Dash, M. Davis, D. Densford, B. Ferguson, R. Greenleaf, F. Greer, S. Lemmey, M. O'Connor, D. Potter, D. Stone, D. Walters, D. Williams. The minutes from the October 5, 2005 Meeting were approved.

The recommendations of the Subcommittee on Discovery Abuse were approved subject to stylistic finalization by Judge Battaglia and Reporter Norman Smith. The final version will be circulated before the next meeting.

Dan Saunders and Tom Lynch continued their respective but complementary presentations on the Indicia of Professionalism and enforcement of a proposed Code or Creed to be adopted by the Commission. Tom's subcommittee's report is final with the discharge of its mission to identify indicia of professionalism. The question of whether a Code of Professional Conduct that incorporates these indicia is made mandatory, in whole or in part, is beyond the scope of the subcommittee's charge. At the next meeting, the Commissions will vote up or down on the Lynch Committee report, as supplemented.

Dan Saunders' subcommittee favors enforcement of a Professionalism Code by way of official comment to Rule 8.4 of the Rules of Professional Conduct. (See Saunders report, attached). But if violation of the Code becomes a violation of the MRPC and thereby enforceable by the Attorney Grievance Commission, the Code must be quite specific and clear as to what is prohibited. There was a lengthy discussion about alternative means for enforcement, including the Federal Court model, authorization of fines by the Court, and modification of Rule 1-341. Dan Saunders will submit a modified rule for consideration at the next meeting.

The Saunders subcommittee presented a proposed change to MRPC Rule 8.4, by adding subsection (h) - that it is professional misconduct to "repeatedly or egregiously violate the Code of Professionalism and Civility." Judge Battaglia pointed out that any such proposed subsection must allow for legitimate advocacy or risk running afoul of First Amendment considerations. This issue has come before the Court of Appeals in an AGC matter. That case was settled before the Court could rule. Judge Battaglia and Norman Smith will make stylistic changes to the proposed new rule.

Linda Lamone submitted a final report of the Subcommittee on the Unauthorized Practice of Law. In short, the subcommittee recommends no change in existing law. The Maryland State Bar Association now has a "Public Protection" committee on the unauthorized practice of law. In addition, Linda's subcommittee recommends the Professionalism Commission have a continuing oversight role in this areal. With these modifications, the report was approved.

The next meeting will be on January 11, 2005 at 3:00 p.m. Judge Battaglia adjourned the meeting at 6:00 p.m. Various Subcommittee Reports and handout materials will be made a part of these minutes.

Norman L. Smith, Reporter